

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5175

ADOLFO PEREZ, ET UX.,

Petitioners,

—v.—

DAVID H. CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE
DIVISION, ARIZONA HIGHWAY DEPARTMENT, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

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RELEVANT DOCKET ENTRIES

Plaintiffs' Complaint was filed August 2, 1968.

Plaintiffs' Motion for Preliminary Injunction together with supporting affidavits were filed August 2, 1968.

Defendants' Motion to dismiss was filed September 11, 1968.

Plaintiffs' Opposition to Defendants' Motion to Dismiss was filed September 20, 1968.

The District Court's Order granting Defendants' Motion to Dismiss was filed September 26, 1968.

Plaintiffs' Notice of Appeal to the United States Court of Appeals for the Ninth Circuit was filed October 14, 1968.

United States Court of Appeals for the Ninth Circuit's Opinion was dated and filed January 26, 1970.

Motion for Re-hearing in the United States Court of Appeals for the Ninth Circuit was filed February 9, 1970.

Denial of Motion for Re-hearing by the United States Court of Appeals for the Ninth Circuit was filed on February 18, 1970.

Notice of Appeal to the United States Supreme Court was filed April 15, 1970.

Petition for writ of certiorari and motion to proceed in forma pauperis was filed in this Court on April 27, 1970.

This Court's Order granting certiorari and motion to proceed in forma pauperis was dated and filed October 12, 1970.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civ-2478 Tuc.

[File Endorsement Omitted]

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and
EMMA PEREZ for her separate self, PLAINTIFFS

vs.

DAVID H. CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE
DIVISION, ARIZONA HIGHWAY DEPARTMENT, STATE OF
ARIZONA and D. H. HASTINGS, SUPERVISOR, FINANCIAL
RESPONSIBILITY SECTION, MOTOR VEHICLE DIVISION,
ARIZONA HIGHWAY DEPARTMENT, STATE OF ARIZONA,
DEFENDANTS

COMPLAINT—Filed August 2, 1968

I

This is an action for injunctive and declaratory relief sought by plaintiffs to secure rights, privileges and immunities established by the Thirteenth and the Fourteenth Amendments to the Constitution, as well as an action for declaratory relief on the basis that the State statute in question violates Art. VI, cl. 2 as well as Art. I, Sec. 10 of the United States Constitution.

II

That this Court has jurisdiction by virtue of Title 28, U.S.C., Section 1334 and 11 U.S.C., Section 11, as well as Title 28, U.S.C., Section 1343, together with the provisions of Title 42, subchapter I, U.S.C., particularly Section 1983 of Title 28 for the redress of the deprivation by defendants, the due process of law and the equal protection of laws guaranteed to the plaintiffs by the Fourteenth Amendment of the United States Constitution. Declaratory relief is sought herein under Title 28, U.S.C., Sections

2201 and 2202 and a temporary and permanent injunction against the defendants under Title 28, U.S.C., Sections 2281 and 2284 and a three-judge Federal Courts is requested. Injunctive power is also conferred upon the Court by virtue of 28 U.S.C. 1651.

III

That plaintiffs, husband and wife, are residents of this judicial district. That they are citizens of the United States and citizens of the State of Arizona.

IV

That defendant, DAVID H. CAMPBELL, is the Superintendent of the Motor Vehicle Division of the Arizona Highway Department, State of Arizona, and that defendant, D. H. HASTINGS, is the Supervisor of the Financial Responsibility Section of the Motor Vehicle Division, Arizona Highway Department, State of Arizona.

V

That on July 8, 1965, in the City of Tucson, Arizona, plaintiff ADOLFO PEREZ, alone, while driving his automobile, collided with another automobile owned by a Leonard Pinkerton and operated by Janice Pinkerton, a minor.

VI

That on the 6th day of September, 1966, a complaint was filed in the Superior Court of the State of Arizona, in and for the County of Pima, Case No. 97569, by the Pinkertons against the plaintiffs, as husband and wife.

VII

That on October 31, 1967, plaintiffs confessed judgment to the Pinkertons and an order accepting the confession of judgment and judgment against the plaintiffs in the amount of \$2,425.98, plus court costs in the amount of \$25.90, was duly entered on November 8, 1967.

VIII

That on November 6, 1967, plaintiffs, husband and wife, each filed a Petition in Bankruptcy in this Court and that each of the plaintiffs was adjudicated a bankrupt in Case Nos. B-7925-Tuc. and B-7926-Tuc.

IX

That on July 8, 1968, an order was entered as to each of the plaintiffs, discharging each of them from all debts and claims that were provable by the Bankruptcy Act against the estates of each of the plaintiffs.

X

That the debt and judgment owed to the Pinkertons was duly scheduled in the schedules of each of the plaintiffs, with the creditor's address.

XI

That on March 13, 1968, the plaintiffs were served with notice by the defendants that pursuant to Arizona Revised Statutes, Section 28-1162 A, which provides that:

"The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and section 28-1165."

That on June 10, 1968, each of the plaintiffs turned in the driver's license to the defendants.

XII

That despite the adjudication and discharge in bankruptcy of each of the plaintiffs, Arizona Revised Statutes, Section 28-1163 B provides that:

"B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judg-

ment debtor from any of the requirements of this article."

XIII

That A.R.S. Section 28-1163 B is in direct conflict with the Bankruptcy Act and is in violation of the Supremacy clause, Article VI, cl. 2 of the United States Constitution.

XIV

That Arizona Revised Statutes, Section 28-1162 further provides in part B that:

"B. If the judgment creditor consents in writing, in such form as the superintendent may prescribe, that the judgment debtor be allowed license and registration or nonresident operating privilege, and the same may be allowed by the superintendent in his discretion, for six months from the date of the consent and thereafter until the consent is revoked in writing, notwithstanding default in the payment of the judgment, or of any installments thereof prescribed in Sec. 28-1165, provided the judgment debtor furnishes proof of financial responsibility."

XV

That A.R.S. 28-1162 B is in direct conflict with the Bankruptcy Act and is in violation of the Supremacy clause, Article VI, cl. 2 of the United States Constitution by giving the judgment creditor the sole discretion of determining if and when the driving licenses may be restored to each of the plaintiffs.

XVI

That A.R.S. 28-1163 B violates the Thirteenth Amendment of the United States Constitution for the reason that it enslaves and forces each of the plaintiffs to remain in perpetual involuntary servitude until the judgment is paid or else the right to drive on the public highways as well as the right to register a motor vehicle in Arizona would be perpetually denied to each of the plaintiffs.

XVII

That each of the plaintiffs is financially unable to pay money to satisfy the judgment in any manner whatsoever. That as a result of their poverty, they are now perpetually denied their right to drive on the public highways and in registering any automobile. That A.R.S. Section 28-1162, singly, and in conjunction with Section 28-1163 B, in denying them this right is an invidious discrimination and violates the equal protection of laws as guaranteed under the Fourteenth Amendment of the United States Constitution.

XVIII

That in forfeiting perpetually each of the plaintiffs' right to drive on public highways and in registering any motor vehicle until payment of judgment, A.R.S. 28-1162, singly, and in conjunction with A.R.S. 28-1163 B, operates as a Bill of Attainder prohibited by Article I, Section 10 of the United States Constitution as well as a denial of due process of law under the Fourteenth Amendment of the United States Constitution.

XIX

That as to plaintiff, EMMA PEREZ, A.R.S. 28-1162, singly, and together with A.R.S. 28-1163 B, in suspending her right to drive and in prohibiting her from registering any motor vehicle, deprives her of the due process and equal protection laws as guaranteed to her by the Fourteenth Amendment for the reason that she was not at any material times negligent in the operation of an automobile which has resulted in the judgment. That her part in the judgment was solely that of the wife of the negligent driver, plaintiff, ADOLFO PEREZ.

XX

That as to the plaintiff, EMMA PEREZ, A.R.S. 28-1162, singly, and in conjunction with A.R.S. 28-1163 B, in forfeiting perpetually her right to drive and to register a motor vehicle, is a Bill of Attainder as forbidden by Article I, Section 10 of the United States Constitution.

XXI

That each of the plaintiffs is now suffering daily irreparable injury and harm as a result of the actions of the defendants, and that plaintiffs have no other plain, speedy and adequate remedy at law from this injury and harm other than invoking equity in obtaining temporary and permanent injunction against the defendants.

WHEREFORE, plaintiffs pray as follows:

1. That this Court assume jurisdiction and convene a three-judge Court pursuant to Title 28, U.S.C., Sections 2281 and 2284.
2. That this Court set a date for hearing on plaintiffs' motion for preliminary injunction pursuant to Title 28, U.S.C., 2284, ordering the defendants to show cause, if any they have, why the drivers' licenses and right to register a motor vehicle should not be restored to the plaintiffs, husband and wife, and to plaintiff, EMMA PEREZ, as her separate self, pendente lite.
3. That this Court enter a declaratory judgment pursuant to Title 28, U.S.C., Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that Arizona Revised Statutes, Section 28-1162, singly, and together with Section 28-1163 B, violates the rights, the due process of law and the equal protection of laws as to the plaintiffs and plaintiff, EMMA PEREZ, secured by the Fourteenth Amendment to the Constitution of the United States; that they constitute slavery and involuntary servitude in violation of the Thirteenth Amendment of the Constitution of the United States, as well as being violative of Article 1, Section 10 of the United States Constitution as a Bill of Attainder. That A.R.S. 28-1163 B be also declared as violative of the Supremacy clause, Article VI, cl. 2 of the United States Constitution.
4. That a permanent injunction be entered against the defendants, their successors to office, agents and employees to restore the driving licenses of the plaintiffs and plaintiff, EMMA PEREZ, and also the right of the plaintiffs and plaintiff, EMMA PEREZ, to register a motor vehicle in the State of Arizona.

5. That this Court grant the plaintiffs and plaintiff, EMMA PEREZ, any other and further relief as this Court may deem to be just and proper.

/s/ Adolfo Perez

/s/ Emma Perez

**LEGAL AID SOCIETY OF THE PIMA COUNTY BAR
ASSOCIATION**

By: /s/ Anthony B. Ching
ANTHONY B. CHING
Chief Trial Counsel
112 West Pennington Street
Tucson, Arizona 85701
Attorneys for Plaintiffs

*[Duly sworn to by Adolfo Perez and Emma Perez, jurats
omitted in printing]*

9

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civ-2478 Tuc.

[Title Omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed August 2,
1968

The plaintiffs and the plaintiff, EMMA PEREZ, for her separate self, move this Court for a preliminary injunction commanding the defendants, their agents, successors and employees, pending the final determination of this action, to restore and reinstate to the plaintiffs and to plaintiff, EMMA PEREZ, their drivers' licenses and the right to register a motor vehicle in the State of Arizona.

The grounds of this Motion, more fully set forth in the verified Complaint and the attached affidavit of plaintiffs, ADOLFO PEREZ and EMMA PEREZ, are that:

(a) Unless enjoined by this Court, the defendants will continue to deny to plaintiffs and to plaintiff, EMMA PEREZ, the right to drive and to register a motor vehicle in the State of Arizona.

(b) Such denial by the defendants has resulted and will continue to result in immediate and irreparable injury, loss and damage to the family life, well-being and physical and psychological health of the plaintiffs and of plaintiff, EMMA PEREZ, as more particularly appears in the affidavit attached hereto.

(c) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the defendants or the public, but will prevent irreparable injury to the plaintiffs.

Respectfully submitted,

LEGAL AID SOCIETY OF THE
PIMA COUNTY BAR ASSOCIA-
TION

By: /s/ Anthony B. Ching
Chief Trial Counsel
112 West Pennington Street
Tucson, Arizona 85701
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CIVIL NO. _____

[Title Omitted]

AFFIDAVIT OF PLAINTIFF EMMA PEREZ IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIONSTATE OF ARIZONA)
) SS.
COUNTY OF PIMA)

EMMA PEREZ, being first duly sworn upon her oath, deposes and says:

1. That she is the wife of plaintiff ADOLFO PEREZ and the mother of HECTOR PEREZ, age 17; GILBERT PEREZ, age 14; LAURA PEREZ, age 9, and DANIEL PEREZ, age 6.
2. That she is not gainfully employed other than as a housewife; that since the suspension of her driver's license and automobile registration the following has occurred.
3. That the two older children attended Pueblo High School, one and one-half miles from her home; that they had to walk to and from school due to her inability to drive them to school. That LAURA PEREZ attended Van Buskirk School, one mile from home; that LAURA's transportation to and from school is furnished by friends and relatives, and that at times she had to walk the distance, which caused her to have nose bleeding. That LAURA has suffered from nose bleeding for some four years and the walking in the summer heat had aggravated her condition.
4. That in shopping for the family she usually walks to the stores and at times she has to take a bus. That this often results in her being unable to purchase in large quantities and also to go to purchase supplies at the many discount stores remote from her home. That in going to the doctors for her children she has to rely either on rela-

tives or the public transportation and at times she must walk with the children. That she must resort to walking most of the other times when she must go out on business for herself and her family.

5. That said suspension has caused affiant great harm and inconvenience and that she is suffering irreparable injury.

/s/ Emma L. Perez
EMMA PEREZ

SUBSCRIBED AND SWORN TO before me this 2nd
day of August, 1968.

/s/ Nina Ames
Notary Public

My Commission expires: June 20, 1971

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CIVIL No. _____

[Title Omitted]

AFFIDAVIT OF PLAINTIFF ADOLFO PEREZ IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

STATE OF ARIZONA)
) SS.
COUNTY OF PIMA)

ADOLFO PEREZ, being first duly sworn upon his oath, deposes and says: 1. That he is the husband of plaintiff EMMA PEREZ, and the father of HECTOR PEREZ, age 17; GILBERT PEREZ, age 14, LAURA PEREZ, age 9, and DANIEL PEREZ, age 6.

2. That affiant is employed by Krueger Manufacturing Company in Tucson, Arizona; that his place of work is approximately seven (7) miles from his home; that since the suspension of his driver's license and automobile registration he has relied on transportation furnished by his friends and neighbors, and at times he has to rely on public transportation and walking.

3. That in other cases when he needs transportation he has to rely on relatives and friends whenever an occasion arises.

4. That said suspension has caused affiant great harm and inconvenience and that he is suffering irreparable injury.

/s/ Adolfo Perez
ADOLFO PEREZ

SUBSCRIBED AND SWORN TO BEFORE ME this
2nd day of August, 1968.

/s/ Nina Ames
Notary Public

My commission expires: June 20, 1971

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civ-2478 Tuc.

[Title Omitted]

ORDER GRANTING PLAINTIFFS' MOTION TO PROCEED IN
FORMA PAUPERIS—Filed August 2, 1968

UPON READING the verified Complaint herein, the Motion to Proceed in Forma Pauperis and the Affidavit of plaintiffs in support of plaintiffs' Request to Proceed in Forma Pauperis; and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND
DECREED:

That plaintiffs' Motion to Proceed in Forma Pauperis be granted pursuant to 28 U.S.C. 1915.

DONE IN OPEN COURT this 2nd day of August,
1968.

/s/ James A. Walsh
JAMES A. WALSH
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. Civ-2478-TUC

[Title Omitted]

DEFENDANTS' MOTION TO DISMISS—Filed September 11,
1968

(Oral Argument Requested)

Comes now defendants, David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, State of Arizona and D. J. Hastings, Supervisor, Financial Responsibility Section, Motor Vehicle Division, Arizona Highway Department, State of Arizona, by and through the Attorney General, Gary K. Nelson, and Robert H. Schlosser, Assistant Attorney General, and moves that this court dismiss this action because the allegations as plead fail to comply with Federal Rules of Civil Procedure, Rule 12(b)1 and Rule 12(b)6 as follows:

1. That a court convened pursuant to 28 U.S.C. 2281 et seq. does not have jurisdiction of this action.
2. That plaintiffs' complaint should be dismissed for it fails to state a claim upon which relief can be granted.

Respectfully submitted, this 10th day of September 1968.

GARY K. NELSON
The Attorney General

/s/ Robert H. Schlosser
ROBERT H. SCHLOSSER
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. Civ-2478-TUC

[Title Omitted]

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO
DISMISS—Filed September 20, 1968

Plaintiffs oppose defendants' motion to dismiss for the following reasons:

1. That this case is a proper case for a three-judge Federal Court.
2. That there are other substantial federal constitutional questions besides the supremacy clauses.
3. That as to the plaintiff Emma Perez the supremacy clause is not the main thrust of plaintiffs' complaint that plaintiff Emma Perez without being at fault suffers a deprivation of her rights without any meaningful constitutional protections.
4. That the complaint states a cause of action.

LEGAL AID SOCIETY

By: /s/ Anthony B. Ching
112 West Pennington Street
Tucson, Arizona 85701
Attorneys for the Plaintiffs

Copy mailed this 20th day of September, 1968, to:

Robert H. Schlosser
Assistant Attorney General
State Capitol
Phoenix, Arizona

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. Civ-2478 Tucson

[Title Omitted]

ORDER—September 26, 1968

The Court rules that plaintiffs' claims as to the unconstitutionality of the Arizona statutes involved in this action are obviously insubstantial and, accordingly, the application that the Court request the appointment of a three-judge court is denied.

IT IS ORDERED granting the motion of defendants to dismiss plaintiffs' complaint for failure to state a claim upon which relief can be granted, and the complaint is dismissed.

Kesler v. Department of Public Safety (1962), 369 U.S. 153, 82 S.Ct. 807, 7 L.ed 2d 641; *Reitz v. Mealey* (1941), 314 U.S. 33, 62 S.Ct. 24, 86 L.ed 21; *Escobedo v. State Department of Motor Vehicles* (Cal. 1950), 222 P.2d 1, 6; *Sheehan v. Division of Motor Vehicles* (Cal. 1934), 35 P.2d 359, 361; *Rosenblum v. Griffin* (N.H., 1938), 197 A. 701, 704; *Berberian v. Lussier* (R.I. 1958), 139 A.2d 869, 873; *State v. Finley* (Kan. 1967), 426 P.2d 256, 265; 35 ALR 2d 1011, *et seq.*

DATED: September 26, 1968.

/s/ James A. Walsh
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CIVIL ACTION NO. Civ.-2478 Tucson

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and
EMMA PEREZ for her separate self, PLAINTIFFS

vs.

DAVID H. CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE
DIVISION, ARIZONA HIGHWAY DEPARTMENT, STATE OF
ARIZONA and D. H. HASTINGS, SUPERVISOR, FINANCIAL
RESPONSIBILITY SECTION, MOTOR VEHICLE DIVISION,
ARIZONA HIGHWAY DEPARTMENT, STATE OF ARIZONA,
DEFENDANTS

NOTICE OF APPEAL—Filed October 16, 1968

NOTICE IS HEREBY GIVEN that ADOLFO PEREZ
and EMMA PEREZ, plaintiffs above named, hereby ap-
peal to the United States Court of Appeals for the Ninth
Circuit from the order of this court, Honorable James A.
Walsh presiding, denying plaintiff's request to convene a
three judge court and dismissing plaintiff's complaint for
failure to state a claim upon which relief can be granted
entered in this action of the 26th day of September, 1968.

DATED this 14th day of October, 1968.

/s/ Anthony B. Ching
Chief Trial Counsel
Legal Aid Society
112 West Pennington Street
Tucson, Arizona 85701

/s/ Winton D. Woods, Jr.
Legal Aid Society
112 West Pennington Street
Tucson, Arizona 85701

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23,463

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and
EMMA PEREZ for her separate self, APPELLANTS

vs.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle
Division, Arizona Highway Dept., etc., ET AL., APPELLEES

Appeal from the United States District Court for the
District of Arizona

OPINION—January 26, 1970

BEFORE: CHAMBERS, CARTER and KILKENNY,
Circuit Judges.

KILKENNY, Circuit Judge:

In the District Court, the appellants challenged the constitutionality of certain Arizona statutes, sought to convene a three-judge court¹ and attempted to secure a preliminary injunction against appellees. The District Court concluded that the unconstitutional claims were obviously insubstantial and that the appellants' complaint failed to state a claim upon which relief could be granted. It denied the request for a three-judge court and dismissed complaint. We AFFIRM.

On July 8, 1965, Adolfo Perez was involved in an accident in his home state of Arizona. At the time, he was driving alone in an automobile registered in his name, but owned by the community Adolfo Perez and Emma Perez, husband and wife, the appellants. Later, in the Arizona Court, the occupants of the other automobile instituted an

¹ 28 U.S.C. § 2281.

action against appellants for damages sustained in the accident. Appellants appeared in that action and confessed judgment for approximately \$2,450.00. Adolfo's driver's license, and his automobile registration, were thereafter suspended by reason of his failure to carry the liability insurance required under the provisions of ARS § 28.1142. Subsequently, the appellants filed separate petitions in bankruptcy and each was adjudicated a bankrupt. The confessed judgment was scheduled by each of the bankrupts. Appellants were thereafter duly discharged.

At a later date, the appellants were served with a notice by the Arizona Highway Department that their drivers' licenses, as well as motor vehicle registration, had been suspended pursuant to the provisions of ARS § 28.1162 (A).² ARS § 28.1163(B) provides, among other things, that a discharge in bankruptcy does not relieve a judgment debtor from the effect of ARS § 28.1162(A). Appellants allege that the suspension of their drivers' licenses and motor vehicle registration has caused them, and their family, a great hardship. ARS § 28.1165 permits the payment of this type of judgment in installments and, as long as payments thereunder are not in default, the drivers' licenses and motor vehicle registration of the judgment debtors may be returned and retained by them. Appellants have attempted to make an arrangement between the parties for payment of the judgment in installments, but no agreement has thus far been reached.

APPELLANTS' CONTENTIONS

Appellants' contentions, briefly stated, are as follows:

(1) That, as applied to appellants, ARS § 28-1163(B) is in conflict with Section 17 of the Bankruptcy Act, 11 U.S.C. § 35, and thus violates the supremacy clause of the United States Constitution.

² ARS § 28.1162(A):

"The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and § 28-1165."

(2) That ARS § 28-1162(A), separately, and when read in connection with ARS § 28-1163(B), violates the due process and equal protection clauses of the Constitution, as imposed on the states by the Fourteenth Amendment.

(3) That the challenged statutes violate the Thirteenth Amendment to the Constitution, which prohibits involuntary servitude.

(4) That the challenged statutes constitute a bill of attainder prohibited by Article I, Section Ten of the United States Constitution.

The first issue has been decided against appellants in *Kesler v. Dept. of Public Safety*, 369 U.S. 153 (1962) and *Reitz v. Mealey*, 314 U.S. 33 (1941). Appellants ask us to re-examine these cases. Aside from our duty to follow Supreme Court decisions, we believe that the cases are sound.

In our view, all contentions of appellant, Adolfo Perez, have been answered against him by *Kesler v. Dept. of Public Safety*, *supra*, and *Reitz v. Mealey*, *supra*. The differences between the Utah statute involved in *Kesler* and the New York statute under scrutiny in *Reitz* and the challenged Arizona statute are so slight that we view them as *de minimis non curat lex*. For that matter, the requirements of the Arizona statutes are considerably less open to question than those under challenge in *Kesler* and *Reitz*. Inherent in the Supreme Court disposition of both *Kesler* and *Reitz* are rulings adverse to the equal protection, due process and other constitutional arguments of appellant, Adolfo Perez.

Aside from the decisions in *Kesler* and *Reitz*, a number of responsible courts have spoken on the subject and have held that financial responsibility laws, such as the one here in question, are not violative of the equal protection clause of the Fourteenth Amendment. The bellwether of this group dealing with the legislation before us in *Schechter v. Killingsworth*, 93 Ariz. 273, 380 P.2d 136 (1963), *Schechter*, in overruling *Goodwin v. Superior Court*, 68 Ariz. 108, 201 P.2d 124 (1948), holding that license to operate a motor vehicle was a mere privilege, and not a property right, went on to hold that the provisions of the Arizona Financial Responsibility Act requiring the posting of

security did not constitute deprivation of equal protection of the law in its application only to uninsured drivers who had been so unfortunate as to have been in an accident.

Financial responsibility laws, such as the Arizona statutes before us, do not unconstitutionally discriminate against the poor. Moreover, *Schechter* teaches that the provisions of the Arizona legislation, designed to provide security against uncompensated damages, is not violative of substantive due process. Although *Kesler* is not cited in *Schechter*, the logic there employed follows the same general pattern. No one questions that one of the principal purposes of financial responsibility acts is the protection of the public using the highways from financial hardship which might result by the negligent use of automobiles by financially irresponsible persons. That object is accomplished by requiring proof of financial responsibility by those involved in an accident either by the showing of insurance which covers the accident or requiring a bond or a deposit of cash or other securities. Incident to one of its principal purposes, by reason of threat of loss of driving rights following an uninsured accident, the legislation tends to encourage operators of motor vehicles to obtain liability insurance and to invite drivers to drive more carefully. The latter, however, are not the primary objectives of this legislation. The Arizona Court correctly rejected the constitutional challenges of lack of due process and equal protection of the laws. The fact that a person may be poor and unable to furnish financial security or pay a judgment growing out of his conduct on the highways does not guarantee that person a right to drive. Here, we should mention, as was emphasized in *Kesler*, the fact that the Arizona legislation permits the judgment debtors to pay the judgments in installments. While we are not governed by state decisions interpreting the United States Constitution, there is no rule against following those decisions when they are patterned after those in the Federal Courts.

APPEAL OF EMMA PEREZ

Mrs. Perez argues that the automobile was registered in her husband's name, he was the negligent driver and, al-

though the automobile was community property² and she, as a member of the community, confessed judgment that, nevertheless, the decisive logic of *Kesler* and *Reitz* should be confined to the driver of the automobile, such as her husband. She reasons that the rules stated in those cases should not be applied to an innocent wife who had no connection whatsoever with the conduct which was responsible for confession and entry of the judgment. There is a distinction. But it is a distinction without a significant difference. When she confessed judgment with her husband, she conceded her financial responsibility for the amount of the judgment. Under Arizona law, she had no alternative. *Donato v. Fishburn*, 90 Ariz. 210, 367 P.2d 245 (1961).

Starting with the fundamental premises that ownership of the vehicle was in the community of husband and wife and that Mrs. Perez' ownership was equal to her husband's subject to her husband's right to administer the property, *Mortensen v. Knight*, 81 Ariz. 325, 305 P.2d 463 (1956), we now explore Mrs. Perez' principal contention. She says she had nothing to do with the negligent driving of her husband. On the record before us that fact must be conceded. Moreover, she argues that her confession of judgment affects only her interest in the automobile and other community property. This status, she argues, should not lead to a forfeiture of her driver's license. In arriving at a proper result, we must take judicial notice of the fact that large numbers of the motor vehicles driven on the Arizona highways are community property. The husband or the wife, if each so desired, could purchase an automobile with separate funds and in such case the automobile would be the separate property of the purchaser. The negligent operation of such an automobile on separate business would not call into question the liability of the other spouse, nor the cancellation of the latter's license. The judgment entered in such a case would be against the spouse operating the vehicle or someone operating it with his authority.

It seems to us that Mrs. Perez' legal status, on the facts before us, is closely analogous to that of an automobile

² ARS § 25-211.

owner who permits another to drive it. If the driver is negligent, judgment is entered against both the driver and the owner, or the owner alone. The financial responsibility laws have been uniformly applied against the owner under these circumstances. The parent case on this line of authority seems to be *In re Opinion of the Justices*, 251 Mass. 569, 147 N.E. 681 (1925), where the Supreme Judicial Court of Massachusetts explored the problem under that state's compulsory motor vehicle insurance act. It was there held that the extension of liability of the owner of a motor vehicle so as to include personal injuries caused by it, while being negligently operated with the owner's express or implied consent, even though not by himself, his servant or agent, violate no constitutional requirement. The Court held that such an extension of liability and the requirements for security by the owner of a motor vehicle for compensation of personal injuries caused by it, do not differ in principle from the civil liability act affording remedies to those injured by an intoxicated person against the person who caused such intoxication in whole or in part by sale or gift of intoxicating liquor. The Court then goes on to say that the general principle which sustains this type of legislation is that, when the general welfare of travelers on the highway, in the opinion of the legislature, is threatened by and demands protection against a specific evil, any rational means may be employed to remedy that evil.

The logic of the Massachusetts court was used to reach the same conclusion in *Watson v. State Division of Motor Vehicles*, 212 Cal. 279, 298 Pac. 481 (1931). The Arizona Supreme Court also employed the Massachusetts decision in reaching its conclusion in *State v. Price*, 49 Ariz. 19, 63 P.2d 653 (1937).

More in point is *Sheehan v. Division of Motor Vehicles*, 140 Cal. App. 200, 35 P.2d 359 (1934), *rehearing den. August 20, 1934, hearing den.*, Supreme Court, September 24, 1934, holding valid a statute permitting cancellation of a driver's license when the licensee was unable to pay a judgment. There, a judgment was entered against both husband and wife for damages suffered in a highway accident where the husband was driving the automobile. The judgment against here was sought and secured solely

on the ground that she was the owner of the automobile in question. There, as here, the judgment debtors were unable to satisfy the judgment in whole or in part. On failure to satisfy the judgment, the judgment debtors' operators' licenses and registration certificates were revoked. There is a striking similarity between the California statute involved in that case and the one here before us. There, as here, the question presented was whether the wife's license should be revoked inasmuch as the judgment was entered against her solely by reason of her ownership of the automobile and not by reason of any negligence on her part in operating it. The California court answered in the affirmative. We approve the statement in that case that most of the reasons for revocation of a license applying to the operator of a motor vehicle, also apply to an owner who permits his vehicle to be operated under conditions which make him liable to another.

The following cases, among others, invoke the same legal principles and uphold the state's right to revoke the driver's license and the car registration after judgment has been entered against the owner and remains unsatisfied. *Continental Cas. Co. v. Phoenix Constr. Co.*, 46 Cal.2d 423, 296 P.2d 801 (1956); *State v. Price*, *supra*; *Reitz v. Mealey*, *supra*; *Sullins v. Butler*, 175 Tenn. 468, 135 S.W.2d 930 (1940); *Nulter v. State Road Comm'n.*, 119 W.Va. 312, 193, S.E. 549, 194 S.E. 270 (1937); *Gillaspie v. Dept. of Public Safety*, 152 Tex. 459, 259 S.W.2d 177 (1953), cert. den. 347 U.S. 933; *State v. Stehlek*, 262 Wis. 642, 56 N.W.2d 514 (1953); *Escobedo v. State Dept. of Motor Vehicles*, 35 Cal.2d 870, 222 P.2d 1 (1950); *Annot.*, 35 A.L.R.2d 1011 (1954).

Can we logically distinguish *Escobedo*, and other cases of like tenor, from the case before us? Simply stated, a valid distinction does not exist. In *Escobedo*, the wife was the owner of the automobile, permitting her husband to drive the vehicle on the California highways. Here, the wife is the owner of her community interest in the automobile. The statutory and decisional law of Arizona make the husband what might be termed the managing agent of the wife in the control of the community automobile. We might well say that the Arizona community property

law was written into and became part of the marriage contract between appellants. Moreover, Mrs. Perez' drivers' license is not a right which is entirely separate and distinct from the community. With married couples in Arizona, the driver's licenses of both husband and wife are an integral part of the ball of wax, which is the basis of the Arizona community property laws. Although issued to the individuals, the licenses grant permission to drive community vehicles where a husband and wife are concerned. The fact, if it be a fact, that Mrs. Perez could not use the community property to purchase casualty insurance is beside the point. Her driver's license was issued subject to the financial responsibility law. The loss of her driver's license is the price an Arizona wife must pay for negligent driving by her husband of the community vehicle, provided, that neither she, her husband, nor the community pay the damages, established by judgment, flowing from the husband's negligent acts. In these circumstances, the police power of the state to exercise proper control over reckless, wrongful driving on its highways overbalances the wife's right to retain her license. It is our considered judgment that the legislation in question bears a real and a substantial relationship to public safety on the Arizona highways. Since Mrs. Perez cannot provide proof of that responsibility, she is no longer entitled to drive on the highways. Of course, arrangements can still be made to pay the judgment in installments.

Three-Judge Court

We agree with the trial judge that the claims of unconstitutionality are unsubstantial, within the meaning of the rule stated in *Ex Parte Buder*, 271 U.S. 461 (1926), as analyzed and approved in *Swift & Co. v. Wickham*, 382 U.S. 111 (1965).

Other contentions raised by the appellants have received our consideration.⁴ We find them without substance.

AFFIRMED.

⁴ The problems rising from a divorce of the parties or death of the husband are not before us.

UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 23463

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and
EMMA PEREZ for her separate self, APPELLANTS

vs.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle
Division, Arizona Highway Dept., etc., ET AL., APPELLEES

APPEAL from the United States District Court for the
District of Arizona.

THIS CAUSE came on to be heard on the Transcript of
the Record from the United States District Court for the
District of Arizona and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here or-
dered and adjudged by this Court, that the judgment of
the said District Court in this Cause be, and hereby is
affirmed.

Filed and entered Jan. 26, 1970.

UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

Excerpt from Proceedings of Wednesday, February 18th,
1970

Before: CHAMBERS, CARTER and KILKENNY,
Circuit Judges

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court,
IT IS ORDERED that the petition of appellant filed Feb-
ruary 9, 1970 and within time allowed therefor by rule
of court, for a rehearing of above cause be, and hereby
is denied.

SUPREME COURT OF THE UNITED STATES

No. 5175, October Term, 1970

ADOLFO PEREZ ET UX., PETITIONERS

v.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle
Division

On petition for writ of Certiorari to the United States
Circuit Court of Appeal for the Ninth Circuit.

On consideration of the motion for leave to proceed
herein *in forma pauperis* and of the petition for writ of
certiorari, it is ordered by this Court that the motion to
proceed *in forma pauperis* be, and the same is hereby,
granted; and that the petition for writ of certiorari be,
and the same is hereby, granted.

And it is further ordered that the duly certified copy
of the transcript of the proceedings below which accom-
panied the petition shall be treated as though filed in re-
sponse to such writ.

October 12, 1970.

